

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

03-MD-01570 (GBD)(SN)

**TERRORIST ATTACKS ON  
SEPTEMBER 11, 2001**

**ORDER**

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**SARAH NETBURN, United States Magistrate Judge:**

This document relates to:

Ashton, et al. v. al Qaeda Islamic Army, et al., No. 02-cv-06977

Bauer, et al. v. al Qaeda Islamic Army, et al., No. 02-cv-07236

Burlingame, et al. v. Bin Laden, et al., No. 02-cv-07230

Schneider, et al. v. al Qaeda Islamic Army, et al., No. 02-cv-07209

Plaintiffs in Ashton, et al. v. al Qaeda Islamic Army, et al., No. 02-cv-06977 (“Ashton”),

Bauer, et al. v. al Qaeda Islamic Army, et al., No. 02-cv-07236 (“Bauer”), Burlingame, et al. v.

Bin Laden et al., No. 02-cv-07230 (“Burlingame”), and Schneider, et al. v. al Qaeda Islamic

Army, et al., No. 02-cv-07209 (“Schneider”), (collectively, the “Ashton Plaintiffs”), move to

amend their complaint under Federal Rules of Civil Procedure 15 and 17. ECF No. 8709.<sup>1</sup> They

seek to clarify the capacities of plaintiffs named in the Ashton Plaintiffs’ Sixth Amended

Complaint, filed on September 30, 2005. That complaint did not indicate that certain named

plaintiffs, listed in ECF Nos. 8711-1, 8711-2, 8711-3, 8711-4, were asserting claims both as

individuals and as personal representatives of victims’ estates or as legal guardians of minor

children. Relatedly, claims brought by minor children were subsumed into those of their

guardians in that complaint. But children who have since reached the age of majority can now

prosecute those claims in their own names. The Ashton Plaintiffs’ motion requests amendments

<sup>1</sup> Unless otherwise noted, all ECF numbers refer to the main MDL docket, No. 03-md-01570.

to the pleadings and the case caption to set forth all parties asserting claims in their individual and representative capacities.

Federal Rule of Civil Procedure 15(a)(2) permits a party to amend its complaint with the court's leave. Courts are directed to "freely give leave when justice so requires." Id. This decision is committed to the discretion of the court, McCarthy v. Dun & Bradstreet Corp., 482 F.3d 184, 200 (2d Cir. 2007), but granting "leave to amend is the 'usual practice,'" Bank v. Gohealth, LLC, No. 21-cv-1287, 2022 WL 1132503, at \*1 (2d Cir. Apr. 18, 2022) (quoting Hayden v. Cnty. of Nassau, 180 F.3d 42, 53 (2d Cir. 1999)). See Foman v. Davis, 371 U.S. 178, 182 (1962) (finding that leave to amend should be granted "[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment . . ."). The claims are not futile, will not unduly delay these proceedings or prejudice defendants, and were not filed in bad faith or with a dilatory motive. The Ashton Plaintiffs' motion is therefore GRANTED, and it is further ORDERED that:

- The claims of the plaintiffs named in the Ashton Plaintiffs' Sixth Amended Complaint, ECF No. 1463, are clarified to include the multiple capacities in which various plaintiffs are pursuing claims, as provided in ECF Nos. 8711-1, 8711-2, 8711-3, and 8711-4;
- Under Rule 15(c), this Order amends the operative pleadings and relates back to when each of the individuals originally named in the pleadings were added to this action; and
- The Ashton Plaintiffs shall add the additional capacities of these plaintiffs and the names of formerly minor plaintiffs to the Ashton ECF docket in compliance with ECF No. 4295.

The Clerk of the Court is respectfully directed to terminate the motion at ECF No. 8709 and the related motions at ECF No. 1821 in Ashton, No. 02-cv-06977, ECF No. 197 in Bauer, No. 02-cv-07236, ECF No. 253 in Burlingame, No. 02-cv-07230, and ECF No. 89 in Schneider, No. 02-cv-07209.

**SO ORDERED.**



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SARAH NETBURN  
United States Magistrate Judge

DATED: November 7, 2022  
New York, New York